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Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
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RE: Implementation of Section 224 of the Act, GN Docket No. 07-245
Reply Comments by Northern Virginia Electric Cooperative (NOVEC) regarding Part
IV, Federal Communications Commission 47CFR Part 1, Further Notice of Public
Rulemaking (FNPRM)

I. Overview

NOVEC is a not-for-profit electric cooperative serving over 144,000 meters in a six county area in the Northern Virginia suburbs of Washington, D.C. Electricity is delivered by a system consisting of over 6,600 miles of lines, two-thirds of which are underground. The demographics are largely suburban, but they also encompass a significant geographical area that is rural. NOVEC serves a membership with an unusually high level of computer literacy and usage that expects access to broadband. Broadband is available to a large number of NOVEC customers. However, there are demands for broadband service that are not being met, both for business as well as residential customers, some of whom are rural but many who reside in densely populated developments. We are told this by many of our electric service customers who complain that their requests to potential broadband service providers in the area go unanswered in spite of the fact that, in some cases, internet service providers own infrastructure

within very short distances of those potential customers. There are some cases, in fact, of multiple service providers with infrastructure in proximity to the requesting parties but who have still been unresponsive to those potential customers' needs, and the reasons stated to us for not expanding service have never included pole access or attachment rates as a reason.

a. NOVEC agrees with comments made by many electric service providers to the FNPRM, especially those submitted by the "National Rural Electric Cooperative Association" (NRECA), the "Virginia Maryland, Delaware Association of Electric Cooperatives" (VMDAEC) and the Utilities Telecom Council (UTC). In addition we concur with relevant comments made by American Public Power Association (APPA), many of which reflect NOVEC's experiences. We also find many common threads woven throughout most of the comments submitted by investor-owned electric utilities.

b. The National Broadband Plan (NBP), issued the week of March 15, 2010 by the FCC, establishes a vision for expanding broadband access throughout America, and with substantially increased internet transport speeds. Northern Virginia Electric Cooperative (NOVEC) agrees with the NBP that the expansion of broadband may contribute to the increased economic and personal well being of Americans. However, NOVEC opposes the recommendation contained in the NBP for the United States Congress to eliminate the regulatory exemption that appropriately applies to electric cooperatives and municipal electric systems. The elimination of that exemption would expose the cooperative members (the owners) to rules that could effectively require members/owners to subsidize the operation of telephone, cable television, and other land-line and wireless based carriers through access rates for poles and ducts that do not provide accurate and realistic compensation for the use of the electric system infrastructure. The FNPRM, which promotes a universal pole attachment rate, fails to consider

the variation of costs that exist among electric service providers across the nation because of differences in the cost of infrastructure, property taxes, as well as maintenance and operation. While the Commission's proposed regulations do not affect NOVEC directly, they may well affect our ability to reach sensible negotiated agreements with attachers that ensure a fair sharing of costs for NOVEC's members/owners.

II. "Make-Ready" Work Must Remain The Sole Responsibility of the Utility.

We oppose any efforts to cede control of work performed in the power supply space to third parties. The reasons why the proposed imposition of a host of stringent and rigid schedules will have an adverse effect on electric system safety and efficient operation have been well presented by other commenters and we concur with those statements of serious concern. In addition, we emphasize one key safety matter regarding a particularly troubling statement in FNPRM ¶ 32 that utilities may deny access by contractors to work among the electric lines, except where the contractor has special communications-equipment related training or skills that the utility cannot duplicate. While the Commission seems to further affirm that only technicians qualified to work in the power supply space will be allowed, we believe that the basic philosophy of forcing the use of third party contractors is ill-conceived and should be abandoned.

III. Cost Recovery Debates Have to Include All Costs.

Some commenters have argued that the utility's decision to install taller poles than necessary to support the electric system requirements should not be considered as a cost that should rightly be borne by attachers. Many years ago NOVEC made a decision to increase the standard size of its distribution poles. While part of the change was for electric service reasons,

another component of that decision to adopt a taller pole standard, and a higher resulting cost, was in anticipation of the inevitable telephone and cable TV pole attachments that could reasonably be expected. The overarching rationale for this decision was to minimize the need for operational disruptions and non-productive work that would be the result from pole change-outs required to accommodate attachers. Any debate about the recovery of the true cost of attachments must take this into account because those additional costs have never been captured in the costs of make-ready work that is occasionally necessary to accommodate new attachments.

IV. Unauthorized Attachments and Safety Violations are serious issues.

Attachments that are unauthorized and in violation of codes are a real, serious, and pervasive problem. As an example, refer to photographs presented in Exhibit A and Exhibit B that illustrate a recent, August 2010, incident in which a tractor trailer, with a measured height of 13 ft. 1 in., snagged a television cable and in the process broke a NOVEC pole. The resulting power outage lasted more than eight (8) hours, disrupted the lives of 674 customers and required repair resources that could have otherwise been spent in more productive tasks. The minimum Virginia Department of Transportation clearance over public roads of this class is 18 ft, so the attachment was grossly in violation of this standard. This is not an isolated incident. In fact only one month later another comparable event occurred involving a cable highway crossing violation with an unfortunate outcome similar to the one depicted in the photographs.

V. Attachments that fail to maintain separation from the power supply space represent an especially serious safety concern. In 2009 alone, NOVEC discovered and repaired 185 attachments that violated electric safety code requirements. Although we anticipate that the

cooperative will be compensated for repairs that the attacher was in no hurry to make, the diversion of cooperative resources and the lost productivity on behalf of the owner/members was not compensated.

VI. Pole Attachment Rates have little to do with Broadband expansion decisions.

Many comments to the FNPRM claim, but offer no tangible supporting evidence, that pole attachment rates are a major obstacle to broadband deployment. We offer some evidence to the contrary. NOVEC, who has built and operates its own private, secure, fiber optic internal communications network in order to ensure reliable electric system operation, invited a cable television/internet service provider, in a one-time offer, to use a segment of the cooperative's excess fibers, at no cost, to help bring high speed internet to within one hundred feet of a business member of the cooperative who desperately needed the service and who had asked the cooperative for assistance, and in this unusual case we tried to help. The cable/internet provider declined the offer and in the process provided evidence that pole attachment costs are, at best, a minor consideration in the decision-making process about broadband expansion.

VII. Innovative Thinking is needed.

The National Broadband Plan (NBP) identifies ways in which Government can influence broadband expansion and these ways include "Design policies to ensure robust competition" and "Ensure efficient allocation and management of assets". Yet the NBP and the NPRM seem to believe that virtually the only method of promoting broadband through landline infrastructure is to rely solely on cable television and telecommunication service providers to construct and own

cable. Duplication of infrastructure by multiple attaching parties would not seem to be an efficient allocation or efficient management of assets.

a. In the FNPRM the Commission seems to at least implicitly encourage innovative approaches to promote broadband expansion. FNPRM ¶70 that states “...*the Commission encourages, supports and fully expects that mutually beneficial exchanges will take place between the utility and the attaching entity. The Commission wants to promote efforts and utilities to negotiate innovative and mutually beneficial solutions to contested contract issues.*”

We propose that the statement be amended to eliminate the narrowly defined and limiting reference to contract disputes, in this otherwise appropriate and welcomed.

b. FNPRM ¶ 103 states that “...*the Commission seeks comment on any other possible approaches....* Again, the Commission seems to recognize that there are other solutions that are not solely based on cable and telecommunication provider access to utility poles, ducts, and rights of way.

c. To expand upon the Commissions thoughts, and rather than perpetuate the adversarial approach that the FCC takes on behalf of the telecommunications industry, why not reach out to electric utilities, cooperatives and municipal systems and explore alternatives to the single-minded focus on attachment rates and access schedules. The Commission should explore and promote the active involvement of pole owners who are willing to consider constructing and making available fiber optic cable to all broadband service providers on a non-discriminatory basis. Not only would this avoid a reduction in total costs for infrastructure following common routes, especially for long haul routes, it would be constructed in a manner over which the utility would retain responsibility and control, avoiding many of the real problems of distribution

system safety and security that have been pointed out within this document as well as in many comments offered by the electric service providers. In addition, especially for electric service providers who own and operate private fiber for internal communications, the level of maintenance and reliability is very likely to be far superior to that of conventional attachers. While service drops and many routes would not warrant this shared approach, some applications may well achieve an economy of access and in the process, promote the expansion of broadband.

Conclusion

We urge the Commission to consider these comments and those made by the NRECA, the VMDAEC and many other electric service providers who share a common concern that the proposed regulations provide every indication of shifting the legitimate costs of providing pole access from broadband providers to utility ratepayers. In addition, the adoption of the proposed measures may well result in a serious compromise to the safety and reliability of our electric service and the quality of that service to our member/owners.

Respectfully submitted,

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Exhibit A

Tractor Trailer with a height of 13ft. 1in. pulling down a television cable that should have been at a minimum of 18 ft. above the highway.



Exhibit B

The inevitable physical result of cables attached in violation of highway clearance requirements – A power outage of more than 8 hours affecting 674 customers.

